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Proposed Counsel for the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	: :
VIVARO CORPORATION, <i>et al.</i> ,	: Case No. 12-13810 (MG)
	: :
Debtors.	: (Jointly Administered)
	: :
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**APPLICATION FOR AN ORDER AUTHORIZING
EMPLOYMENT AND RETENTION OF ARENT FOX LLP
AS ATTORNEYS FOR THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS *NUNC PRO TUNC* TO OCTOBER 4, 2012**

The Official Committee of Unsecured Creditors (the “Committee”) of Vivaro Corporation, *et al.*, (the “Debtors”) respectfully files this application (the “Application”) seeking entry of an order authorizing the employment and retention of Arent Fox LLP (“Arent Fox”) as attorneys to the Committee *nunc pro tunc* to October 4, 2012, pursuant to section 1103(a) of Title 11 of the United States Code §§ 101 *et seq.* (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2014-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Bankruptcy Rules”), submits the Declaration of George P. Angelich (the “Angelich Declaration”), annexed hereto as Exhibit A and incorporated herein by reference, and respectfully represents as follows:¹

¹ Capitalized terms used herein but not otherwise defined shall have the meaning set forth in the *Affidavit of Philip J. Gund Pursuant to Local Bankruptcy Rule 1007-2* [ECF No. 11] (the “Gund Affidavit”).
NYC/694588.1

BACKGROUND²

The Debtors and Their Businesses

1. On September 5, 2012 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Court”). The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

2. The Debtors produce, market and sell pre-paid international calling cards for consumer end-users, primarily in the Hispanic community. Although the pre-paid calling cards sold by the Debtors may be used to dial international numbers to any country, the Debtors focus their marketing on consumers with interest in outbound calls to Mexico.

3. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the *Affidavit of Philip J. Gund Pursuant to Local Bankruptcy Rule 1007-2* [ECF No. 11] (the “Gund Affidavit”) filed on September 6, 2012 and incorporated herein by reference.

The Committee and Its Selection of Professionals

4. On October 3, 2012, the Office of United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed five (5) members to the Committee, pursuant to sections 1102(a) and 1102(b) of the Bankruptcy Code. A list of the members of the Committee is annexed hereto as Exhibit B. The Committee selected Digicel as its Chair.

² The background facts set forth herein are primarily based upon the representations contained in papers filed by the Debtors in these proceedings. As the Committee was just organized and has not yet verified the accuracy of such statements, nothing contained herein or otherwise shall be deemed a waiver of the Committee’s right to dispute or challenge the facts set forth herein.

5. On October 4, 2012, at a meeting during which all of the Committee members participated, the Committee selected and formally voted to retain Arent Fox as its counsel, subject to the approval of the Court.

6. On October 8, 2012, the Committee selected BDO Consulting, a division of BDO USA, LLP, together with its wholly owned subsidiaries, agents, independent contractors and employees ("BDO"), including Bryan Engle, an independent contractor of BDO, as its financial advisors, subject to the approval of the Court.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334(b). Venue of these proceedings is proper in this Judicial District pursuant to 28 U.S.C. §§ 1408 and 1409. Section 1103(a) of the Bankruptcy Code and Bankruptcy Rule 2014 are the statutory predicates for the relief sought by this Application.

RELIEF REQUESTED

8. By this Application, the Committee seeks to employ and retain Arent Fox, pursuant to section 1103(b) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Bankruptcy Rule 2014-1, as its counsel in these Chapter 11 cases effective as of to October 4, 2012.

9. The Committee selected Arent Fox because the partners and associates of Arent Fox have considerable expertise in the fields of bankruptcy, insolvency, reorganizations, liquidations, debtors' and creditors' rights, debt restructuring and corporate reorganizations, commercial litigation and intellectual property, among other practice areas. Accordingly, the Committee believes that Arent Fox is well-qualified to represent it in these Chapter 11 cases.

10. George P. Angelich will be primarily responsible for Arent Fox's representation of the Committee in these matters. Mr. Angelich is a partner in Arent Fox's Bankruptcy Group

and has extensive experience in all aspects of financial restructuring and bankruptcy issues. Mr. Angelich's practice focuses primarily on matters in Chapter 11 representation, and he has significant experience in corporate bankruptcies. Mr. Angelich received his J.D. from Duquesne University School of Law and his B.A. from Duquesne University.

11. The professional services Arent Fox will be required to render include, but are not limited to, the following:

- (a) to assist, advise and represent the Committee in its consultation with the Debtors relative to the administration of these Chapter 11 cases;
- (b) to assist, advise and represent the Committee in analyzing the Debtors' assets and liabilities, investigating the extent and validity of liens and participating in and reviewing any proposed asset sales or dispositions;
- (c) to attend meetings and negotiate with the representatives of the Debtors and secured creditors;
- (d) to assist and advise the Committee in its examination and analysis of the conduct of the Debtors' affairs;
- (e) to assist the Committee in the review, analysis and negotiation of any plan that may be filed and to assist the Committee in the review, analysis and negotiation of the disclosure statement accompanying any plan;
- (f) to assist the Committee in the review, analysis, and negotiation of any financing or funding agreements;
- (g) to take all necessary actions to protect and preserve the interests of the Committee, including, without limitation, the prosecution of actions on its behalf, negotiations concerning all litigation in which the Debtors are involved, and review and analysis of all claims filed against the Debtors' estates;
- (h) to generally prepare on behalf of the Committee all necessary motions, applications, answers, orders, reports and papers in support of positions taken by the Committee;
- (i) to appear, as appropriate, before this Court, the Appellate Courts, and other courts in which matters may be heard and to protect the interests of the Committee before said Courts and the U.S. Trustee; and
- (j) to perform all other necessary legal services in these cases.

12. Arent Fox has indicated a willingness to act on behalf of the Committee and to render the necessary professional services as attorneys for the Committee.

13. Subject to this Court's approval, Arent Fox will charge for (a) its legal services on an hourly basis in accordance with its ordinary and customary hourly rates³ for services of this type and nature and for this type of matter in effect on the date such services are rendered, and (b) its actual, reasonable and necessary out-of-pocket disbursements incurred in connection therewith. The following are Arent Fox's current hourly rates for work of this nature:

(a) Partners:	\$475 - \$840
(b) Of Counsel:	\$465 - \$760
(c) Associates:	\$290 - \$540
(d) Paraprofessionals:	\$150 - \$270

14. Arent Fox intends to apply to the Court for allowance of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the applicable Bankruptcy Rules, the Local Bankruptcy Rules, the United States Trustee Guidelines, and Orders of this Court. Compensation will be payable to Arent Fox in compliance with the above rules and orders, on an hourly basis, plus reimbursement of actual, necessary expenses incurred by Arent Fox.

DISINTERESTEDNESS OF PROFESSIONAL

15. To the best of the Committee's knowledge, information and belief, and except as otherwise set forth in the Angelich Declaration, none of Arent Fox's respective attorneys hold or represent any interest adverse to the Committee, the Debtors or their creditors, or the estates, or any other party-in-interest herein or their respective professionals in matters relating to the

³ In the normal course of business, Arent Fox revises its regular hourly rates. Accordingly, Arent Fox may increase its billing rates which will be in effect from time to time. If Arent Fox increases its hourly rates over and above the rates contained in this Application, Arent Fox will file the appropriate notice.

Debtors and their estates, and Arent Fox is a “disinterested person,” as the term is defined in section 101(14) of the Bankruptcy Code.

16. To the best of the Committee’s knowledge, and except as otherwise disclosed in the Angelich Declaration, Arent Fox: (i) does not represent any entity having an interest in connection with the cases; (ii) does not hold or represent any interest adverse to the Committee with respect to the matters for which it is being retained; and (iii) is a “disinterested person” as that phrase is defined in section 101(14) of the Bankruptcy Code. Further, neither Arent Fox nor its professionals have any connection with the Debtors, their estates or creditors. Arent Fox’s employment is necessary and in the best interest of the Debtors’ estates.

17. The Committee believes that the retention and employment of Arent Fox is in the best interests of the Committee, the Debtors, and their estates and creditors.

NOTICE

18. Notice of this Application has been given to: (a) the Office of the U.S. Trustee; (b) counsel to the Debtors; and (c) all other persons who have requested notice pursuant to Bankruptcy Rule 2002. The Committee respectfully submits that such notice is sufficient, and requests that this Court find that no further notice of the relief requested herein is necessary or appropriate.

NO PRIOR REQUEST

19. No prior application has been made for the relief requested herein to this or any other Court.

CONCLUSION

WHEREFORE, the Committee respectfully requests that this Court enter an Order, substantially in the form attached hereto as Exhibit C, approving the Application and authorizing the Committee to employ and retain Arent Fox as attorneys to the Committee *nunc pro tunc* to October 4, 2012, and grant such further relief as is just and proper.

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF VIVARO
CORPORATION, *et al.*

Dated: New York, NY
November 7, 2012

Digicel,
COMMITTEE CHAIR

By: 

Conor Clarke
The Dyoll Building
40 Knotsford Blvd.
Kingston, Jamaica

Dated: New York, NY
 October 7, 2012

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